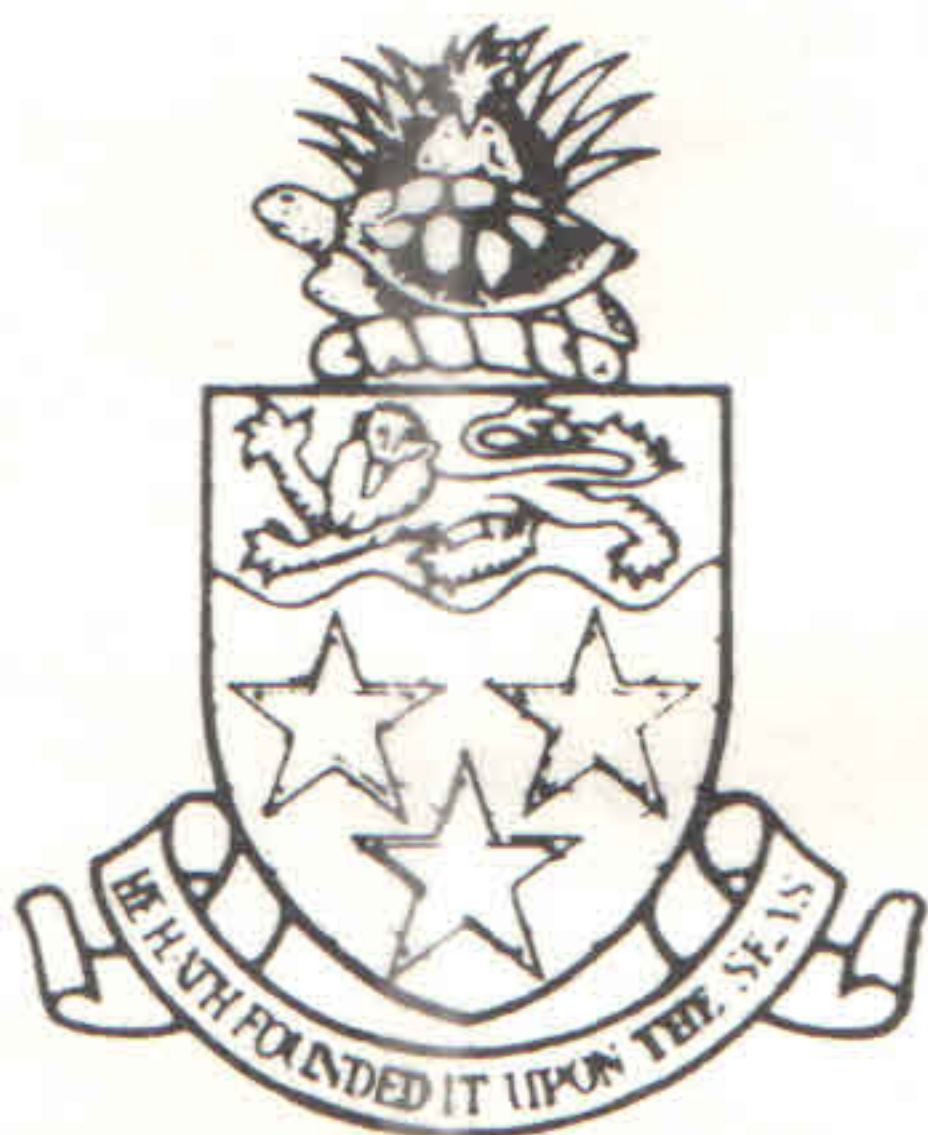


CAYMAN ISLANDS



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THE BANKS AND TRUST COMPANIES LAW, 1989
(Law 4 of 1989)



THE BANK AND TRUST COMPANIES LTD. LTD.
(Incorporated in England)



BANKS AND TRUST COMPANIES LAW, 1989

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CAYMAN ISLANDS

Law 4 of 1989

I Assent

ALAN J. SCOTT

Governor

25th May, 1989

**A LAW TO REPEAL AND RE-ENACT WITH AMENDMENTS
THE BANKS AND TRUST COMPANIES REGULATION LAW (REVISED).**

ENACTED by the Legislature of the Cayman Islands.

Short Title. 1. This Law may be cited as the Banks and Trust Companies Law, 1989.

Interpretation. 2. In this Law, unless the context otherwise requires -

“authorised agent” means a person so designated by a bank or trust company under paragraph (b) of subsection (2) of section 5;

“bank” means a person carrying on banking business;

“banking business” means the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise;

“company” means a company incorporated under the laws of the Islands or under the laws of any other country or place;

“Court” means the Grand Court;

“Governor” means the Governor in Council or such person

(being a member of Executive Council) whom he may by order designate to perform, subject to such conditions and qualifications as he may impose, such of his powers under section 6 (excluding the proviso) or under subsection (4) of section 7, as may be specified;

“Inspector” means the Inspector of Banks and Trust Companies appointed under subsection (1) of section 12 and includes any officer in his department acting under his authority;

“licence” means a licence granted under section 5;

“licensee” means a person holding a licence under this Law;

“trust business” means the business of acting as trustee, executor or administrator;

“trust company” means a company carrying on trust business.

Extent of Law.

3. (1) This Law has effect in addition to and not in derogation of any other provisions having the force of law in the Islands.

(2) This Law does not apply to the Cayman Islands Currency Board and the Cayman Islands Civil Service Association Co-operative Credit Union Limited.

Licence required to carry on banking or trust business

4. (1) No banking business may be transacted from within the Islands, whether or not such business is carried on in the Islands, except by a person who is in possession of a valid licence granted by the Governor authorising him to carry on such business.

(2) No trust company may carry on trust business from within the Islands, whether or not such business is carried on in the Islands, unless it is in possession of a valid licence granted by the Governor authorising it to carry on such business.

(3) Whoever contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment, and in the case of a continuing offence to a fine not exceeding one thousand dollars for each day during which the offence continues.

Application to be made to Governor.

5. (1) Any person desirous of carrying on banking business and any company desirous of carrying on trust business from within the Islands shall make application to the Governor for the grant of a licence. Every such application shall be in writing

tioned in subsection (5), and incorporating a further restriction that the licensee shall not receive or solicit funds by way of trade or business from persons other than those listed in any undertaking accompanying the application for the licence, known as Restricted "B" licences;

(e) trust business with the restriction that the licensee shall not undertake trust business for persons other than those listed in any undertaking accompanying the application for the licence, known as Restricted Trust licences; or

(f) trust business under a Trust licence to a licensee which is a wholly-owned subsidiary of another licensee and where the sole purpose of that subsidiary is to act as its nominee, known as Nominee (Trust) licences.

(5) The holder of a "B" licence shall not -

(a) take deposits from any person resident in the Islands, other than another licensee, or an exempted or an ordinary non-resident company which is not carrying on business in the Islands;

(b) invest in any asset which represents a claim on any person resident in the Islands, except a claim resulting from -

(i) a loan to an exempted or an ordinary non-resident company not carrying on business in the Islands; or

(ii) a loan by way of mortgage to a member of its staff or to a person possessing or being deemed to possess Caymanian status under the Caymanian Protection Law, 1984, for the purchase or construction of a residence in the Islands to be owner-occupied;

(iii) a transaction with another licensee; or

(iv) the purchase of bonds or other securities issued by the Government, a body incorporated by statute, or a company in which the Government is the sole or majority beneficial owner; or

(c) without the written approval of the Governor, carry on any busi-

ness in the Islands other than one for which the "B" licence has been obtained.

(6) Every person to whom a licence is first granted shall at the date of such grant pay the prescribed fee.

(7) Every holder of a licence shall on or before every 15th day of January after the first grant of the licence pay the prescribed annual fee:

Provided that, unless the Inspector waives the same, there shall be payable by a licensee who fails to pay the prescribed annual fee by that date a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the fee is not paid.

(8) Whenever it is considered to be in the public interest, the Governor may refuse to grant a licence.

Shares not to be issued or transferred without approval of Governor.

6. No shares in a company which is a licensee under this Law shall be issued, and no issued shares shall be transferred or disposed of in any manner, without the prior approval of the Governor:

Provided that the Governor may exempt any licensee from the provisions of this section, subject to such terms and conditions, if any, as he may deem necessary.

Capital Requirements.

7. (1) Except in the case of a Restricted "B" licence, a Restricted Trust licence, a Nominee (Trust) licence and a licence in existence at the date of coming into operation of this Law, a licence shall not be granted to a bank or trust company unless it has a fully paid-up capital of not less than four hundred thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Governor.

(2) A Restricted "B" licence and a Restricted Trust licence shall not be granted to a bank or trust company (as the case may be) unless it has a fully paid-up capital of not less than twenty thousand dollars or its equivalent in other currencies, or such greater sum as may be determined by the Governor.

(3) A Nominee (Trust) licence shall not be granted to a trust company unless such trust company furnishes a guarantee from the licensee of which it is a wholly-owned subsidiary for liabilities of up to two hundred thousand dollars.

(4) When he has reasonable cause to believe that there are grounds for doing so, and with the prior approval of the Governor, the Inspector may require a licensee

to increase its fully paid-up capital to such greater sum as he may determine for the nature of the banking business or trust business being or sought to be undertaken.

Use of word "bank",
etc.

8. (1) Except with the approval of the Governor, no person, other than a licensee, shall -

- (a) use or continue to use the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description or title under which such person is carrying on business from within the Islands, whether or not such business is carried on in the Islands;
- (b) make or continue to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking business or trust business;
- (c) in any manner whatsoever solicit or receive deposits from the public.

(2) Except with the approval of the Governor, no company shall be registered, or continue to be registered, by a name which contains the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives, either in English or in any other language, in the description or title under which such company is carrying on business from within the Islands, whether or not such business is carried on in the Islands.

(3) Before giving his approval under subsections (1) or (2) the Governor may require of any person such references and such information and particulars as may be prescribed.

(4) Whenever he considers it to be in the public interest, the Governor may withdraw any approval given under subsection (1).

(5) The Governor may refuse to grant a licence to a bank or trust company or, if such bank or trust company is already in possession of a licence, he may revoke such licence if, in his opinion, such bank or trust company is carrying on or intending to carry on banking or trust business, as the case may be, under a name which -

- (a) is identical with that of any company, firm or business house, whether within the Islands or not, or which so nearly resembles

that name as to be calculated to deceive;

(b) is calculated to suggest, falsely, the patronage of or connection with some person or authority, whether within the Islands or not; or

(c) is calculated to suggest, falsely, that such bank or trust company has a special status in relation to or derived from the Government, has the official backing of or acts on behalf of the Government, of any department, branch, agency or organ of Government, or of any officer thereof, or is recognized in the Islands as a national or central bank or trust company.

(6) Whoever contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment, and in the case of a continuing offence to a fine not exceeding one thousand dollars for each day during which the offence continues.

Accounts.

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9. (1) Every licensee incorporated under the Companies Law shall have its accounts audited annually or at such other time as the Governor or the Inspector may require by an auditor, who shall be a chartered accountant, a certified public accountant or some other professionally qualified accountant, approved by the Inspector.

(2) The audited accounts shall be forwarded to the Inspector within three months of the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Inspector.

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(3) Every licensee not incorporated under the Companies Law shall provide a copy of the audited annual accounts of its head office to the Inspector within three months of the end of the financial year of such parent company, unless prior written approval for an extension has been granted by the Inspector.

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(4) When a licensee incorporated under the Companies Law changes its auditor, the Inspector may require the former auditor to explain the circumstances responsible for such change.

Certain prohibitions on licence.

Cap. 22

10. A licensee incorporated under the Companies Law shall not, without the prior written approval of the Inspector -

(a) open outside the Islands a subsidiary, branch, agency or representative office; or

Number and approval
of directors.

- (b) change its name.
11. (1) A licensee shall at no time have less than two directors.
- (2) Unless exempted from such a requirement by the Inspector, a licensee shall, before the appointment of a director or other senior officer, apply to the Inspector for his written approval of such appointment.
- (3) Approval granted under subsection (2) -
- (a) *ipso facto* lapses if the director or senior officer becomes bankrupt or is convicted of an offence involving dishonesty;
- (b) may be revoked by the Inspector, with the approval of the Governor.
- (4) Approval granted under paragraph (b) of subsection (2) of section 5 may be revoked by the Inspector, with the approval of the Governor.

Powers and duties of
Inspector.

12. (1) The Inspector of Banks and Trust Companies shall be a public officer appointed by the Governor.
- (2) It is the duty of the Inspector -
- (a) to maintain a general review of banking practice in the Islands;
- (b) whenever he thinks fit or when so required by the Governor, to examine by way of the receipt of regular returns or in such other manner as he thinks necessary the affairs or business of any licensee carrying on business in or from within the Islands for the purpose of satisfying himself that the provisions of this Law are being complied with and that the licensee is in a sound financial position and, whenever he thinks fit or when so required by the Governor, to report to the Governor the results of every such examination;
- (c) when required by the Governor to assist in the investigation of any offence against the laws of the Islands which he has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers in their capacity as such;
- (d) to examine accounts and audited annual accounts forwarded to him under section 9 and to report on them to the Governor

whenever he thinks fit or when so required by the Governor; and

- (e) to examine and make recommendations to the Governor with respect to applications for licences.

(3) In the performance of his functions under this Law and subject to the provisions of section 13, the Inspector is entitled at all reasonable times -

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee;
- (b) to request any information, matter or thing from any person who he has reasonable grounds to believe is carrying on banking or trust business in the Islands in contravention of subsections (1) or (2) of section 4; and
- (c) to call upon the manager of the licensee or any similar person, or any officer designated by either of them, for such information or explanation,

as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Law:

Provided that the Inspector shall only have access to the name or title of an account of a depositor of a licensee or to the settlor, name or title of a trust, under the authority of an order of a Judge of the Court made on the ground that there is no other way of obtaining the information required by him.

(4) The Inspector, with the approval of the Governor, may in writing authorise any other person to assist the Inspector in the performance of his functions under this Law.

(5) If it appears to him that there is reasonable ground for suspecting that an offence against this Law has been or is being committed by any person, the Inspector may, with the approval of the Court, take such action as he considers necessary, in the interests of the depositors or of the beneficiaries of any trust, or other creditors of that person, to preserve any assets held by that person.

(6) Whoever fails to comply with any requirement made pursuant to subsection (3) by the Inspector or any person authorised under subsection (4) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

13. (1) Except for the purpose of the performance of his duties or the exercise of his functions under this Law or when lawfully required or permitted to do so by any court of competent jurisdiction within the Islands or under the provisions of any other Law, neither the Inspector nor a person authorised under subsection (4) of section 12 to assist him shall disclose any information relating to any application by any person under the provisions of this Law or to the affairs of a licensee or of any customer of a licensee which he has acquired in the performance of his duties or the exercise of his functions under this Law:

Provided that this subsection shall not apply to the disclosure by the Inspector, with the consent of the licensee, to a banking supervisory authority outside the Islands of general information about that licensee.

(2) Whoever contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

14. (1) Whenever the Governor is of the opinion that a licensee -

- (a) is or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business in a manner detrimental to the public interest, the interest of its depositors or of the beneficiaries of any trust, or other creditors;
- (c) has contravened any provision of this Law; or
- (d) has failed to comply with a condition of its licence, he may forthwith do all or any of the following -
 - (i) revoke the licence;
 - (ii) impose new conditions upon the licence and may amend or revoke those conditions;
 - (iii) require the substitution of any director or officer of the licensee;
 - (iv) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Inspector thereon within three months of the date of his appointment;

(v) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall *mutatis mutandis* have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the Bankruptcy Law (Revised);

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(vi) require such action to be taken by the licensee as he considers necessary.

(2) Notwithstanding subsection (1) of section 21, a licensee may within seven days of the decision apply to the Governor for a reconsideration of his decision to revoke a licence under paragraph (i) of subsection (1) of this section.

(3) A person appointed under paragraphs (iv) and (v) of subsection (1) or whose appointment has been extended under paragraph (b) of subsection (4) shall from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Governor and the Inspector of the affairs of the licensee and of his recommendations thereon.

(4) On receipt of a report under subsection (3), the Governor may -

(a) revoke the appointment of the person appointed under paragraphs (iv) or (v) of subsection (1);

(b) extend the period of his appointment;

(c) subject to such conditions as he may impose, allow the licensee to reorganise its affairs in a manner approved by him; or

(d) revoke the licence and apply to the Court for an order that the licensee be forthwith wound up by that Court in which case the provisions of the Companies Law relating to the winding up of a company by that Court shall *mutatis mutandis* apply.

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(5) Notwithstanding any other provision in this Law, the Governor may revoke a licence if the licensee -

(a) has ceased to carry on banking business or trust business; or

(b) goes into liquidation or is wound up or otherwise dissolved.

(6) Whenever the Governor revokes a licence under sub-paragraph (i) of subsection (1), paragraph (d) of subsection (4) or under subsection (5) he shall cause notice of such revocation to be gazetted; and may also cause such notice to be published (whether within the Islands or elsewhere) in such newspaper or other publication as he may consider necessary in the circumstances.

Governor may apply to Court.

15. The Governor may, in any case in which a licensee, or a person who has at any time been a licensee (whether under this Law or under the Law repealed by section 24), is being wound up voluntarily, apply to the Court if he considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors, and the Court shall make such order as it shall consider appropriate.

Surrender of licence.

16. (1) A licensee which has ceased to carry on the business in respect of which the licence was granted may apply to the Governor to surrender its licence if it -

(a) has ceased to carry on such business, and produces evidence that it has repaid all deposits held by it and has transferred all trust assets held or administered by it; or

(b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all deposits held by it and all its other creditors and has transferred all trust assets held or administered by it,

and the Governor may thereupon approve the surrender.

(2) In the case of an application under paragraph (b) of subsection (1) the Governor may apply to the Court for the licensee to be wound up either by that Court or subject to its supervision, and on the making of such an order the provisions of the Companies Law relating to the winding up of a company by or subject to the supervision of that Court shall *mutatis mutandis* apply.

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Chief Justice may make rules.

17. The Chief Justice may make rules governing the procedure in relation to applications to the Court under subsection (5) of section 12, paragraph (d) of subsection (4) of section 14, section 15 and subsection (2) of section 16.

Power of search.

18. (1) If a Justice of the Peace is satisfied by information on oath given by the Inspector or by a person authorised under subsection (4) of section 12 to assist him either that -

(a) there is reasonable ground for suspecting that an offence against

this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or

- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under subsection (3) of section 12 and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Inspector or such person authorised under subsection (4) of section 12 or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he has reasonable ground for believing ought to have been produced under subsection (3) of section 12:

Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.

(3) Where under this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Whoever obstructs the Inspector or any other person in the exercise of any powers conferred on him under this section is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

False or misleading information.

19. Any licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Governor or the Inspector is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Offences.

20. Any person who contravenes any provision or requirement of this Law for which no offence is specifically created is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Appeals.

21. (1) An appeal lies to the Court from any decision of the Governor -

- (a) revoking a licence under subsection (5) of section 8, or under paragraph (i) of subsection (1) or subsections (4) or (5) of section 14;
- (b) withdrawing any approval under subsection (4) of section 8; or
- (c) requiring a licensee to take certain steps which the Governor may specify under section 14.

(2) An appeal against the decision of the Governor shall be on motion. The appellant within twenty-one days after the day on which the Governor has given his decision shall serve a notice in writing signed by the appellant or his attorney-at-law on the Governor of his intention to appeal and of the general ground of his appeal:

Provided that any person aggrieved by a decision of the Governor may upon notice to the Governor apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Court upon hearing of such application may extend the time prescribed by this section as it deems fit.

(3) The Governor shall upon receiving the notice of appeal transmit to the Clerk of the Court without delay a copy of the decision and all papers relating to the appeal:

Provided that the Governor is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.

(4) The Clerk of the Court shall set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Court may direct.

(5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Court, go into any matters not raised by such statement.

(6) The Court may adjourn the hearing of an appeal and may, upon the

hearing thereof confirm, reverse, vary or modify the decision of the Governor or remit the matter with the opinion of the Court thereon to the Governor.

(7) An appeal against a decision of the Governor shall not have the effect of suspending the execution of such decision.

Immunity

22. Neither the Governor, the Inspector nor any member of the Executive Council shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law, unless it is shown that the act or omission was in bad faith.

Regulations

23. The Governor may make regulations for all or any of the following purposes-

- (a) to prescribe the information, particulars and references which may be prescribed under subsection (1) of section 5 or subsection (3) of section 8;
- (b) to control the form of advertising by licensees;
- (c) to prescribe fees payable under subsections (6) and (7) of section 5;
- (d) generally for carrying the purposes or provisions of this Law into effect.

Repeal and saving

24. The Banks and Trust Companies Regulation Law (Revised) is repealed:

Provided that any licence granted under that Law and in force at the date of coming into operation of this Law shall (until revoked or surrendered) continue in force and have effect as if it had been granted under this Law.

Passed the Legislative Assembly this 15th day of March, 1989.

ALAN J. SCOTT
President.

WENDY LAUER EBANKS
Acting Clerk of the Legislative Assembly.